



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

DOCUMENTS

I. Sketch of Pinckney's Plan for a Constitution, 1787.

THE paper which is given below in the first column is found among the James Wilson manuscripts in the library of the Historical Society of Pennsylvania. Through the courtesy of the librarian, Mr. John W. Jordan, it is here reproduced. The original is in the handwriting of James Wilson. It is undoubtedly an outline of the plan of a constitution presented to the Federal Convention by Charles Pinckney May 29, 1787. In order that the reader may have the evidence before him, there are here given in the second column excerpts from Mr. Pinckney's *Observations on the Plan of Government Submitted to the Federal Convention, in Philadelphia, on the 28th of May, 1787*. The pamphlet containing the *Observations* was printed, or at least distributed, soon after the Convention adjourned.¹ It does not purport to be a speech delivered at the time of submitting the plan to the Convention, but to be made up of remarks "Delivered at different Times in the course of their Discussions".

One or two questions are naturally raised by the inspection of this outline. The readers of the REVIEW will remember that in Volume VIII., pages 509-511, was printed a document which was sent in for publication by Professor J. F. Jameson.² The document was confidently believed to be part of the Pinckney plan, and the finding of the outline below confirms the conclusion, if confirmation were needed. In these two documents we have Wilson's treatment of the plan at two different times. The outline here printed was probably prepared early in the proceedings of the Convention; the other paper consists of excerpts chiefly referring to powers of Congress, and the excerpts were made, it is fair to presume, when Wilson, having been appointed on the Committee of Detail, found the resolutions that had been referred to the committee wanting in particularity concerning the powers to be exercised by the new government. In making the excerpts for his own purposes, Wilson did not exactly follow the order in which the subjects appeared in the plan.

¹ See Madison to Washington, New York, October 14, 1787, *Writings of Madison*, I. 342.

² Also printed in *Annual Report of the American Historical Association, 1902*, I. 130-131.

In the paper entitled "Studies in the History of the Federal Convention of 1787", which was contributed to the *Annual Report of the American Historical Association, 1902* (I. 87), Professor Jameson ingeniously examines the opinions of Pinckney as expressed in the earlier part of the Convention's proceedings, and, neglecting the claims which the South Carolina statesman put forth in later years, and likewise not paying particular regard to the *Observations*, he indicates the ideas which Pinckney evidently advocated. These were of course at variance with the pseudo plan as presented in the journal of the Convention, but were not in most particulars, it should be noticed, out of harmony with the declaration of the *Observations*. Pinckney's notions, as disclosed by Jameson's method, distinctly add to the evidence that the outline before us is a synopsis of the Pinckney plan. In order to make this appear more clearly I have added in foot-notes excerpts from Pinckney's speeches as condensed by Madison and by others who reported on the debates.

Remembering the gracious assurance with which Pinckney in 1818 sent to John Quincy Adams propositions for a new constitution, which were strikingly similar to the finished instrument, one is naturally somewhat hesitant to believe anything the distinguished statesman said concerning his services in the Convention. And yet it seems that we must now give greater credence to the *Observations* than has been given in the past. Perhaps he did not say everything contained in that pamphlet; possibly he did not say much of it; Professor Jameson¹ is of the opinion that only one paragraph, the next to the last,² "was ever heard in Independence Hall".³ It seems very probable however that at least one other part of the *Observations* was actually delivered. In the condensation of a speech made by Pinckney on June 8,⁴ Madison has preserved the order and in several cases almost reproduced the striking phraseology found in the fourteenth and fifteenth paragraphs of the *Observations*,⁵ urging that the national legislature should have the power to negative state laws. But whatever may be the relation between the pamphlet and what Pinckney actually said in the Convention, it is impossible not to believe that the relation between the *Observations* and the lost plan is very close. There is strong, if not conclusive, evidence that all or large portions of the pamphlet were prepared, as comments on the plan, perhaps before Pinckney went to Philadelphia. That they were afterward dressed up for publication, and that

¹ *Ibid.*, I. 121.

² *Observations*, 26-27.

³ Pinckney's speech on July 2, *Documentary History of the Constitution*, III. 263.

⁴ *Ibid.*, III. 88.

⁵ *Observations*, 12-17.

certain ideas were inserted which were really the outgrowth of the Convention's work and not original with Pinckney, is quite within the range of likelihood. For example, it still seems more than probable that the original plan did not contain the provisions spoken of by Pinckney on page 26 of his pamphlet:

The next Article provides for the privilege of the Writ of Habeas Corpus — the Trial by Jury in all cases, Criminal as well as Civil — the Freedom of the Press, and the prevention of Religious Tests, as qualifications to Offices of Trust or Emolument. . . . There is also an authority to the National Legislature, permanently to fix the seat of the general Government, to secure to Authors the exclusive right to their Performances and Discoveries, and to establish a Federal University.

The reasons for believing that these provisions were not in the plan are given by Jameson, and are conclusive.¹ When Pinckney was preparing his pamphlet for the printer, he thrust in not only the comments on his plan of May 29, but those other provisions which he had proposed and advocated as late as August 20.

And yet a comparison of the outline and the pamphlet shows that in most respects the speech as given in the *Observations* was a comment on the plan. We are led by the outline to believe that the speech was prepared in good faith and that in most respects it really described the plan which he presented. On the other hand, the outline below does not give merely a synopsis of the *Observations* as printed; there are variations, not serious, but sufficient to show that Wilson in writing this document did not have the written speech or printed pamphlet before him. The most puzzling variation is in the numbering of the paragraphs. The third paragraph of the outline is called the fourth in the *Observations*. The ninth of the outline is called the fifth in the *Observations*. After mentioning the fifth, the *Observations* speaks of two articles consecutively, numbered in the outline ten and eleven, and then speaks of the "seventh", which of course ought to have been eighth, had Pinckney's genius for accuracy allowed him to count correctly. The reader will notice, however, that on the whole there is a marked similarity in the succession of the articles: number nine of the plan is five in the *Observations*; then follow in order the articles numbered in the outline ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two. An article on naturalization, if it was in the original plan, as one would judge from the *Observations*, is omitted, but there then follows twenty-three, called in the *Observations* "sixteen". To account for such discrepancy as exists is difficult, and an attempt to explain it would be only to

¹ *Annual Report of the American Historical Association, 1902, I. 122, 123.*

hazard a guess. My guess would be that the plan which Pinckney had before him when he prepared the *Observations* was somewhat differently numbered than the one finally filed with the secretary of the Convention.

Pinckney says in concluding his speech as it appears in the pamphlet: "I ought again to apologize for presuming to intrude my sentiments upon a subject of such difficulty and importance. It is one that I have for a considerable time attended to".¹ He had in fact, as a member of Congress, taken this subject of improving the Confederation into serious consideration. In May, 1786, he moved in the Continental Congress the appointment of a grand committee "to take into consideration the affairs of the nation"²; he declared that it was necessary that Congress should have greater powers, that a convention should be called for the purpose, or that Congress should call on the states for enlarged authority. He said "that the confederation was deficient in powers of commerce, in raising troops, and in the means of executing those powers that were given".³ No trace of the discussion of this subject can be discovered in the official papers. Some time early in July⁴ a grand committee was appointed to consider the affairs of the Union. This committee reported August 7, 1786.⁵ It is probable that Pinckney was its chairman. As to this it is difficult to determine, because no mention is made of the committee in the manuscript journal of the old Congress; the manuscript committee-book shows the names arranged in the order of states, running from north to south. The committee appointed a subcommittee of three, of which Pinckney was chairman.⁶ The subcommittee drew up a report, in the preparation of which we may be permitted to think Pinckney had a considerable part. The grand committee accepted and presumably reported the findings of the subcommittee as its own.⁷ The introductory words, as they appear in the original manuscript, are written apparently in Pinckney's hand, a fact worth mentioning only as an indication of his activity. A

¹ *Observations*, 27; Frank Moore, *American Eloquence* (New York, 1862), I. 370.

² See Bancroft, *History of the Formation of the Constitution* (New York, 1882), I. 500, where is quoted Thomas Rodney's report of debates in Congress.

³ *Ibid.*

⁴ I judge that the date was early in July from the place in which the entry appears in the manuscript committee-book, in Papers of the Continental Congress, CXc. 107.

⁵ The original report of this committee is in Papers of the Continental Congress, XXIV., Part I., 179-194, Reports of Committees. It is printed in Bancroft, *History of the Constitution*, II., appendix, 373-377. The date of making the report is obtained from the indorsement on the back of the last sheet, as is also the fact that a subcommittee of three, of which Pinckney was chairman, was appointed. This indorsement is printed by Bancroft.

⁶ *Ibid.*

⁷ *Ibid.*

comparison of the report with the *Observations* and the outline printed below will show that Pinckney was much influenced by his work in the Continental Congress. Did he in large measure embody in his new plan the amendments he had been working on and discussing the previous summer? The quotations given in the foot-notes will aid in answering that question. It will be noticed that he plainly used at least a portion of the report, and it is fair perhaps to believe that his work in the Federal Convention was but a continuation of his work in Congress. In the Convention, however, he had opportunity to propose more radical alterations, and probably the dreary autumn and winter that preceded the meeting at Philadelphia had taught him, as it had taught others, the need of changing the first principles of the system. After arranging for a better form of government, did he not put in much of the seven articles which constituted the report of August 7, 1786?

The portion of the plan which Professor Jameson discovered contains not less than twenty propositions that are found in the report of the Committee of Detail and that are not found in the twenty-three resolutions submitted to the committee, nor in the Virginia or Paterson resolutions.¹ Six of these were presumably taken by Pinckney from the Articles of Confederation. It might possibly also be reasonable to add the power to levy duties on imports and the power to regulate commerce, which were also in the Paterson plan, inasmuch as Pinckney's plan was submitted first; but such ideas were practically common property in 1787. In the document, which is printed in facsimile in Meigs's *Growth of the Constitution in the Federal Convention of 1787*² (Philadelphia, 1900), and which Mr. Meigs has shown to be a draft made by Randolph for the use of the Committee of Detail, thirteen of these twenty propositions appear.³ Of these, four are written in the margin or interpolated in the text in John Rutledge's remarkable handwriting, which is chary about surrendering its secrets. By the help of the outline given below, we can detect other interpolations by Rutledge seemingly taken from Pinckney: (a) the words "by Ballot" in the sentence "who shall be elected by the legislature by Ballot"⁴; (b) "nor lay imposts or duties on imports"⁵; (c) "the consent of the

¹ AMERICAN HISTORICAL REVIEW, VIII. 509; *Annual Report of the American Historical Association*, 1902, I. 130-131. To the provisions printed in italics in the plan on pages 130-131 should be added "fixing the Standard of Weights and Measures". See page 132, note a.

² The nine plates inserted between pages 316 and 317.

³ *Annual Report of the American Historical Association*, 1902, I. 132.

⁴ Meigs, plate vi.

⁵ *Ibid.*, plate v; Report of Committee, article xiii.

Legislatures of such States shall be also necessary to its admission", which is presumably the result of Rutledge's marginal note, "States lawfully arising and if within the Limits of any of the pres[en]t States by Consent of the Legisl^e of those States".¹ To these possibly may be added (d) "cases of Admiralty . . . jurisdiction", certainly interpolated by Rutledge,² and perhaps taken from Pinckney.³ It might be fair to add to these the provision for calling a convention for amending the Constitution on the application of the legislatures of two-thirds of the states. In other words, besides the four previously mentioned by Jameson, three and perhaps four of Pinckney's propositions are thus seen working their way into the report of the committee. All but the first, after some verbal modification, found a place in the Constitution.

We may next notice that in the report of the Committee of Detail are two other provisions that may be ascribed to the influence of the Pinckney plan: (a) the provision for the time of election of members of each house⁴; (b) the provision for the meeting of Congress.⁵ But there are a number of other provisions, which Pinckney borrowed from the Articles of Confederation and which, presumably through the medium of his plan, found their way into the report of the committee: the clause granting to the citizens of each state the privileges and immunities of citizens in the various states; the provision for the surrender of criminals, which was also in the Paterson plan; the provision that each state shall give full faith to acts, records, and judicial proceedings of other states; the provision that no state shall make treaties; that no state shall keep a naval or land force; that Congress shall have the right to regulate the value of money and its alloy. All of these with some modification entered into the Constitution. We should notice also that the Committee of Detail reported in favor of having the Senate establish a court of final resort for trial of cases between states, almost a direct copy of the provision in the Articles of Confederation and appearing as article fourteen of the Pinckney plan, but of course not going into the final draft of the Constitution. There is some indication in the outline before us that at least two other provisions which finally appeared in the Constitution were in a measure due to Pinckney's suggestion.

By help of the condensation of the plan which Professor Jameson discovered and from the light thrown on the problem by the

¹ Report of Committee, article xvii; Meigs, plate vii.

² Report of Committee, article xi, section 3; Meigs, plate vii.

³ See article 15 below.

⁴ Report of Committee, article vi, section i.

⁵ *Ibid.*, article iii.

document printed below, we can say that Pinckney suggested some thirty-one or thirty-two provisions which were finally embodied in the Constitution; of these, about twelve were originally in the Articles of Confederation, and of course the fact that they were restated by Pinckney in his plan may not have had material influence in securing their adoption.

It must not be assumed that we know all that Pinckney thus contributed to the fabric of the Constitution. We now know very definitely the nature of his recommendations, we know that some of them found formulation in the Continental Congress, and we know that many of them were finally embedded in the Constitution; but there were doubtless some other propositions that likewise found permanence in the work of the Convention. If mere assertion based on analogy and general probability were worth while, other portions of the Constitution might be pointed to as coming from the ingenious and confident young statesman from South Carolina.

OUTLINE OF THE PLAN.

1. A Confederation between the free and independent States of N. H. etc. is hereby solemnly made uniting them together under one general superintending Government for their common Benefit and for their Defense and Security against all Designs and Leagues that may be injurious to their Interests and against all Forc[e] [?] and Attacks offered to or made upon them or any of them

2 The Stile

3 Mutual Intercourse — Community of Privileges — Surrender of Criminals — Faith to Proceedings etc.

EXCERPTS FROM THE OBSERVATIONS.

. . . their true interest consist in centering as much as possible, the force and resources of the union in one superintending Government (p. 14).¹

The 4th article, respecting the extending the rights of the Citizens of each State, throughout the United States; the delivery of fugitives from justice, upon demand, and the giving full faith and credit to the records and proceedings of each, is formed exactly upon the principles of the 4th article of the present Confederation, except with this difference, that the demand of the Executive of a State, for any fugitive, criminal offender, shall be complied with (p. 11).

¹ Page references are to the pamphlet. The passages can readily be found in the reprint in Moore's *American Eloquence*, I. 362-370.

² Or Foes.

4 Two Branches of the Legislature — Senate — House of Delegates — together the U. S. in Congress assembled

H. D. to consist of one Member for every thousand Inhabitants $\frac{3}{5}$ of Blacks included¹

Senate to be elected from four Districts² — to serve by Rotation of four Years — to be elected by the H. D. either from among themselves or the People at large³

5 The Senate and H. D. shall by joint Ballot annually⁴ chuse the Presid^t U. S. from among themselves or the People at large. — In the Presd^t the executive authority of the U. S. shall be vested. — His Powers and Duties — He shall have a Right to advise with the Heads of the different Departments as his Council

The division of the legislative will be found essential, because, in a government where so many important powers are intended to be placed, much deliberation is requisite (p. 8).

The Senate, I propose to have elected by the House of Delegates, upon proportionable principles, in the manner I have stated, which though rotative, will give that body a sufficient degree of stability and independence. The districts, into which the Union are to be divided, will be so apportioned, as to give to each its due weight, and the Senate, calculated in this, as it ought to be in every Government, to represent the wealth of the Nation . . . each class being elected for four years (p. 9).

The executive should be appointed septennially, but his eligibility ought not to be limited (p. 9).

¹ On June 11 (*Doc. Hist.*, III. 107) Pinckney moved that the ratio of representation be "in proportion to the whole number of white and other free Citizens and inhabitants of every age sex and condition including those bound to servitude for a term of years and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State." Compare his attitude on July 6 and 12 (*ibid.*, 283, 324). He advocated the election of the first branch "by the State Legislatures and not by the people" (*ibid.*, 69).

² On July 2 (*ibid.*, 264) Pinckney "read his motion to form the States into classes, with an apportionment of Senators among them". Madison adds as a note "see art. 4 of his plan". Pierce says (Pierce's notes in *AMERICAN HISTORICAL REVIEW*, III. 319), "Mr. Ch^s Pinckney said he meant to propose to divide the Continent into four Divisions, out of which a certain number of persons sh^d be nominated, and out of that nomination to appoint a Senate."

³ Apparently in accordance with this proposition, on June 1, when the proposal that the Senate should be chosen by the first branch out of persons nominated by the state legislatures was being discussed, Pinckney moved to strike out the clause providing for "nomination by the State Legislature" (*Doc. Hist.*, III. 31).

⁴ In the Convention Pinckney favored having the executive consist of a single person (*ibid.*, 35, 51) and strongly advocated his being elected by the legislative body (*ibid.*, 355), but proposed a seven-year term (*ibid.*, 39), instead of the one-year term provided for here. It is very probable, however, that the word "annually" indicates a mistake by Wilson in jotting down the plan; in the *Observations* Pinckney used the word "septennially".

6 Council of Revision, consisting of the Presid^t S. for for. Affairs, S. of War, Heads of the Departments of Treasury and Admiralty or any two of them tog^r w^t the Presid^t.¹

7 The Members of S. and H. D. shall each have one Vote, and shall be paid out of the common Treasury.

8 The Time of the Election of the Members of the H. D. and of the Meeting of U. S. in C. assembled.

9 No State to make Treaties — lay interfering Duties — keep a naval or land Force Militia excepted to be disciplined etc according to the Regulations of the U. S.

In the Parliament of Great-Britain, as well as in most, and the best instituted legislatures of the States, we find, not only two Branches, but in some, a Council of Revision, consisting of their executive, and principal officers of government. This, I consider as an improvement in legislation, and have therefore incorporated it as a part of the system. It adds to that due deliberation, without which, no act should be adopted ; and, if in the affairs of a State government, these restraints have proved beneficial, how much more necessary may we suppose them, in the management of concerns, so extensive and important ? (pp. 8-9.)

The assigning to each State its due importance in the federal Councils, at once removes three of the most glaring defects and inconveniencies of the present Confederation. The first is, the inequality of Representation : the second is, the alteration of the mode of doing business in Congress ; that is, voting individually, and not by States : the third is, that it would be the means of inducing the States to keep up their delegations by punctual and respectable appointments (pp. 7-8).

There is also in the Articles, a provision respecting the attendance of the Members of both Houses ; it is proposed that they shall be the judges of their own Rules and Proceedings, nominate their own Officers, and be obliged, after accepting their appointments, to attend the stated Meetings of the Legislature (p. 25).

The 5th article, declaring, that individual States, shall not exercise certain powers, is also, founded on the same principles as the 6th of the Confederation (p. 11).

¹ "Mr Pinkney had been at first in favor of joining the heads of the principal departments the Secretary at War, of foreign affairs and — in the council of revision. He had however relinquished the idea from a consideration that these could be called on by the Executive Magistrate whenever he pleased to consult them" (*Doc. Hist.*, III. 78-79).

10. Each State retains its Rights not expressly delegated¹ — But no Bill of the Legislature of any State shall become a law till it shall have been laid before S. and H. D. in C. assembled and received their Approbation.²

11. The exclusive Power of S. and H. D. in C. Assembled

12. The S. and H. D. in C. ass. shall have exclusive Power of regulating trade and levying Imposts — Each State may lay Embargoes in Times of Scarcity³

13 — of establishing Post-Offices

The next, is an important alteration of the Federal System, and is intended to give the United States in Congress, not only a revision of the Legislative acts of each State, but a negative upon all such as shall appear to them improper (p. 12).

I must confess, I view the power of revision and of a negative as the corner stone of any reform we can attempt (p. 13).

The next article, proposes to invest a number of exclusive rights, delegated by the present Confederation (p. 17).

The 7th article invests the United States, with the compleat power of regulating the trade of the Union, and levying such impost and duties upon the same, for the use of the United States, as shall, in the opinion of Congress, be necessary and expedient (p. 17).

The 8th article only varies so far from the present, as in the article of the Post-Office, to give the Federal Government a power, not only to exact as much postage, as will bear the expence of the Office, but also, for the purpose of raising a revenue (p. 18).

¹ Compare “No position appears to me more true than this; that the General Gov.^t can not effectually exist without renewing to the States the possession of their local rights”, from Pinckney’s speech of June 25 (*ibid.*, 207).

² “M^r. Pinkney moved ‘that the National Legislature sh^d. have authority to negative all Laws which they sh^d. judge to be improper’” (*ibid.*, 88).

³ Compare this section of the plan with the italicized portions of the following proposed amendment to the Articles of Confederation, reported by the committee of the Continental Congress referred to above :

“Art. 14. *The United States in congress assembled shall have the sole and exclusive power of regulating the trade of the states as well with foreign nations as with each other, and of laying such prohibitions, and such imposts and duties upon imports and exports, as may be necessary for the purpose; provided the citizens of the states shall in no instance be subjected to pay higher duties and imposts than those imposed on the subjects of foreign powers; provided, also, that all such duties as may be imposed shall be collected under such regulations as the United States in congress assembled shall establish consistent with the constitutions of the states respectively, and to accrue to the use of the state in which the same shall be payable; provided, also, that the legislative power of the several states shall not be restrained from laying embargoes in times of scarcity; and provided, lastly, that every act of congress for the above purpose shall have the assent of nine states in congress assembled, and in that proportion when there shall be more than thirteen in the union.*” Bancroft, *History of the Constitution of the United States*, II., appendix, 374.

14. S. and H. D. in C. ass. shall be the last Resort on Appeal in Disputes between two or more States; which Authority shall be exercised in the following Manner etc

15. S. and H. D. in C. ass. shall institute offices and appoint officers for the Departments of for. Affairs, War, Treasury and Admiralty.

They shall have the exclusive Power of declaring what shall be Treason and Misp. of Treason ag^t U. S.—and of instituting a federal judicial Court, to which an Appeal shall be allowed from the judicial Courts of the several States in all Causes wherein Questions shall arise on the Construction of Treaties made by U. S.—or on the Laws of Nations—or on the Regulations of U. S. concerning Trade and Revenue—or wherein U. S. shall be a Party—The Court shall consist of Judges to be appointed during good Behaviour²—S and H. D. in C. ass. shall have the exclusive Right of instituting in each State a Court of Admiralty, and appointing the Judges etc of the same for all maritime Causes which may arise therein respectively

The 9th article respecting the appointment of Federal Courts, for deciding territorial controversies between different States, is the same with that in the Confederation¹; but this may with propriety be left to the Supreme Judicial (p. 18).

The 10th article gives Congress a right to institute all such offices as are necessary for managing the concerns of the Union; of erecting a Federal Judicial Court, for the purposes therein specified; and of appointing Courts of Admiralty for the trial of maritime causes in the States respectively. . . . At present there is no Tribunal in the Union capable of taking cognizance of their officers who shall misbehave . . . for this, as well as the trial of questions arising on the law of nations, the construction of treaties, or any of the regulations of Congress in pursuance of their powers, or wherein they may be a party, there ought certainly to be a Judicial, acting under the authority of the Confederacy (pp. 18–19).

¹ The ninth article of the Articles of Confederation made the United States in Congress assembled “the last resort on appeal in all disputes and differences . . . between two or more States . . . which authority shall always be exercised in the manner following.”

² Pinckney was in favor of having the judges appointed by the legislative body (*Doc. Hist.*, III. 64, 117, 400).

Compare the foregoing provisions in the second paragraph of this section of the plan with the italicized portions of the following proposed additional Article of Confederation reported by the committee of the Continental Congress referred to above:

“Art. 19. The United States in congress assembled shall have the sole and *exclusive power of declaring what offences against the United States should be deemed treason and what offences against the same misprision of treason*, and what offences shall be deemed piracy or felonies on the high seas, and to annex suitable punishments to all the offences aforesaid respectively, and power to *institute a federal judicial court* for trying and punishing all officers appointed by congress for all crimes, offences, and misbehavior in their offices, and *to which court an appeal shall be allowed from the judicial courts of the several states in all causes wherein questions shall arise on the meaning and construction of treaties entered into by the United States with any foreign power, or on the law of nations, or wherein any question shall arise respecting any regulations that may hereafter be made by congress relative to trade and commerce, or the collection of federal revenues* pursuant to powers that shall be vested in that body, or wherein questions of

16. S and H. D. in C. Ass shall have the exclusive Right of coining Money — regulating its Alloy and Value — fixing the Standard of Weights and Measures throughout U. S.

17. Points in which the Assent of more than a bare Majority shall be necessary.¹

18 Impeachments shall be by the H. D. before the Senate and the Judges of the federal judicial Court.

19. S. and H. D. in C. ass. shall regulate the Militia thro' the U. S.

20. Means of enforcing and compelling the Payment of the Quota of each State.

21. Manner and Conditions of admitting new States.

The exclusive right of coining Money — regulating its alloy, and determining in what species of money the common Treasury shall be supplied, is essential to assuring the Federal Funds (p. 19).

In all those important questions where the present Confederation has made the assent of Nine States necessary, I have made the assent of Two-Thirds of both Houses, when assembled in Congress, and added to the number, the Regulation of Trade, and Acts for levying an Impost and raising a Revenue (p. 20).

The exclusive right of establishing regulations for the Government of the Militia of the United States, ought certainly to be vested [vested], in the Federal Councils . . . an uniformity in Discipline and Regulations should pervade the whole . . . they should have the exclusive right of establishing regulations for their Government and Discipline (pp. 20-21).

In every Confederacy of States, formed for their general benefit and security, there ought to be a power to oblige the parties to furnish their respective quotas (p. 21).

The article empowering the United States to admit new States into the Confederacy is become indispensable, from the separation of

importance may arise, *and the United States shall be a party*, provided that the trial of the fact by jury shall ever be held sacred, and also the benefits of the writ of habeas corpus; provided, also, that no member of congress or officer holding any other office under the United States shall be a judge of said court, and *the said court shall consist of seven judges, to be appointed* from the different parts of the union, to wit, one from New Hampshire, Rhode Island, and Connecticut, one from Massachusetts, one from New York and New Jersey, one from Pennsylvania, one from Delaware and Maryland, one from Virginia, and one from North Carolina, South Carolina, and Georgia, and four of whom shall be a quorum to do business." Bancroft, *History of the Constitution of the United States*, II., appendix, 376-377.

¹ Compare this section and the accompanying excerpt from the *Observations* with the last provision of the proposed additional Article of Confederation, given above on page 744.

22. Power of dividing annexing and consolidating States, on the Consent and Petition of such States.¹

23. The assent of the Legislature of States shall be sufficient to invest future additional Powers in U. S. in C. ass. and shall bind the whole Confederacy.²

24. The Articles of Confederation shall be inviolably observed, and the Union shall be perpetual³: unless altered as before directed

25. The said States of N. H. etc guarrantee mutually each other and their Rights against all other Powers and against all Rebellion etc.

certain districts from the original States, and the increasing population and consequence of the Western Territory (p. 22).

I have also added an article authorizing the United States, upon petition from the majority of the citizens of any State, or Convention authorized for that purpose, and of the Legislature of the State to which they wish to be annexed, or of the States among which they are willing to be divided, to consent to such junction or division, on the terms mentioned in the article (p. 22).

The 16th article proposes to declare, that if it should hereafter appear necessary to the United States to recommend the Grant of any additional Powers, that the assent of a given number of the States shall be sufficient to invest them and bind the Union as fully as if they had been confirmed by the Legislatures of all the States (p. 23).

¹ If the *Observations* are to be relied on, as of course they cannot in all particulars, an article giving the national government power to determine on what terms naturalization might be granted should be here inserted.

² "Mr Pinkney hoped that in case the experiment should not unanimously take place nine States might be authorized to unite under the same Govern^t." (*Doc. Hist.*, III. 67.)

³ In the original appears a cross, above the line, before "and" and also after "perpetual", thus indicating presumably that the writer of the outline had noticed that the thought of the paragraph was not consistent, and that the phrase between the crosses should come later, bringing the last phrase, "unless altered as before directed", closer to "inviolably".